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No. 458

# In the Supreme Court of the United States

OCTOBER TERM, 1966

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LEAH JOYCE TELLER, PETITIONER

*v.*

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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# In the Supreme Court of the United States

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No. 458

LEAH JOYCE TELLER, PETITIONER

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES IN OPPOSITION**

Petitioner was convicted after a trial in the United States District Court for the Northern District of Illinois on three counts charging violations of the federal narcotics laws. On November 22, 1966, she was sentenced to five years' imprisonment on count 1, which charged a violation of 26 U.S.C. 4704(a). The court granted a new trial as to the other counts and subsequently dismissed them on motion of the government (V. R. 4–5).[1] The court of appeals affirmed (Pet. App. A).

[1] The record on file with this Court is in six volumes. The hearing on the motion to suppress is in Volume II. The trial

The evidence at a pre-trial suppression hearing and at trial showed that on July 23, 1966, narcotics agents obtained an arrest warrant for petitioner's husband and a warrant authorizing a search of the home he shared with petitioner and their children (III R. 5). The search warrant directed the seizure of $3,000 in government funds, the fruits of a prior narcotics transaction engaged in by petitioner's husband, which there was probable cause to believe was concealed on the premises (II R. 53–54; Pet. 5).

Mr. Teller was arrested in front of his house just as petitioner and their children were about to depart in an automobile (II R. 11). After Mr. Teller was taken inside the house, petitioner and the children voluntarily followed (II R. 150). Petitioner was told that she was not under arrest, that she could go anywhere in the house, but that she was not to interfere with the search (II R. 32, 75; III R. 103). The search of the house commenced in the master bedroom (III R. 29). Petitioner went into the bedroom, embraced her husband, and placed her open purse on the bed (III R. 31, 35; II R. 94). Petitioner thereafter entered the bedroom three or four times, but did not seek to remove the purse (II R. 22; III R. 32, 137–142).

During the search of the bedroom, an agent picked up the open purse about twenty minutes after petitioner had placed it on the bed (II R. 95; III R. 173). The purse was found to contain, *inter alia*, $530 in

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on the merits is recorded in Volume III. A portion of the separate trial of petitioner's husband is recorded in Volume IV. Volume V deals with the sentencing of petitioner.

cash and two vials of narcotics (III R. 9–10, 51, 106, 118). Petitioner, who was then present in the bedroom, was told that she was under arrest for violating the narcotics laws (III R. 7, 11, 29, 71). After being warned of her constitutional rights, she acknowledged that the purse was hers and that the $530 had been given to her by her husband, but she declined to answer questions concerning the ownership of the vials (III R. 12, 52).

At the suppression hearing, petitioner argued that she had been unlawfully arrested outside the house by the agents, that she had then been ordered into the house, and that the search of her purse was the fruit of the illegal arrest (II R. 56–60). The district court found, however, that petitioner had voluntarily returned to the house, and that the search of the purse, which, according to her own testimony, was open when she placed it on the bed, was within the authority conferred by the valid search warrant (II R. 150–154).

1. Petitioner contends that since the agents could not have lawfully searched her purse if she had retained it in her personal possession and control, they obtained no greater authority because she voluntarily placed the open purse on the bed while the agents were engaged in a lawful search of the house. The premise upon which this argument rests—that the agents could not have searched the purse had petitioner retained it in her personal possession—is of doubtful validity in the circumstances of this case. Petitioner was not merely a guest in the premises. Cf. *United States* v. *Di Re,* 332 U.S. 581, 586–587.

On the contrary, petitioner was a joint occupant with her husband of the premises being lawfully searched. In view of that relationship and the subject of the warrant, it would not have been unreasonable for the agents to believe that her husband might have given petitioner some of the government funds before the agents arrived and that she was carrying that money in her purse when she voluntarily reentered the house. In short, the agents would have been justified in searching her purse—whether she placed it on the bed or not—to prevent any attempt to defeat the purpose of the warrant. See *Walker* v. *United States*, 327 F. 2d 597, 599–600 (C.A.D.C.), certiorari denied, 377 U.S. 956.

In all events, even if petitioner correctly assumes that the purse would have been immune from search if she had retained it in her immediate possession, the fact is that she exposed the open purse to official examination by her own voluntary conduct. The agents knew that petitioner resided with her husband, and it was apparent that the purse was the type of a receptacle that could have contained the government funds obtained in the illegal narcotics transaction. When the open purse was placed on the bed by petitioner during the course of the search, it was reasonable for the agents to treat it as part of the household effects properly subject to the search. As the court of appeals concluded, an open purse lying on the bed, like an item of clothing which petitioner had removed and placed in the closet, "was merely another household item subject to the lawful execution of the search warrant which the federal agents held

and were enforcing" (Pet. App. A. 4, 6). See *Walker* v. *United States, supra,* 327 F. 2d at 599–600; *United States* v. *Pasha,* 332 F. 2d 193, 196 (C.A. 7), certiorari denied, 379 U.S. 839. As this Court recently pointed out, "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection". *Katz* v. *United States,* 389 U.S. 347, 351. Since the agents did not exceed their authority under the warrant, they were justified in seizing the contraband narcotics, even though the narcotics were not the subject of the warrant. *Harris* v. *United States,* 331 U.S. 145, 154–155.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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